

REMARKS

The Office Action mailed January 12, 2007, has been received and reviewed. Claims 16-23 were pending in the application. Claims 16-32 stand rejected. Applicants have amended claims 16 and 28, and respectfully request reconsideration of the application as amended herein.

35 U.S.C. § 103(a) Obviousness Rejections

Obviousness Rejection Based on U.S. Patent No.6,073,025 to Chheda et al. in view of U.S. Patent No.5,889,844 to Kim et al.

Claims 16-19, 25, 27-32 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Chheda (U.S. Patent No.6,073,025) in view of Kim (U.S. Patent No.5,889,844). Applicants respectfully traverse this rejection, as hereinafter set forth.

M.P.E.P. 706.02(j) sets forth the standard for a Section 103(a) rejection:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, **the prior art reference (or references when combined) must teach or suggest all the claim limitations.** The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). (Emphasis added).

The 35 U.S.C. § 103(a) obviousness rejections of claims 16-19, 25, 27-32 are improper because the elements for a *prima facie* case of obviousness are not met. Specifically, the rejection fails to meet the criterion that the prior art references must teach or suggest all the claims limitations.

Claims 16, 28

Regarding independent claim 16 and claims 19 and 25 depending therefrom and independent claim 28 and claims 29-32 depending therefrom, Applicants have amended independent claims 16 and 28 to include claim limitations not taught or suggested in the cited references.

Applicants' independent claims 16 and 28 recite, in part, ***"enabl[ing] concurrent communication between the wireless subscriber unit and the first and second sources using the***

traffic channel ..., wherein one of the first and second sources is communicating by non-voice data and the other one of the first and second sources is communicating by voice data.”

The Office Action concedes that:

Chheda lacks a teaching of the sources communicating non-voice data. Note that the claims do not distinguish over ***both sources communication non-voice data***. Official Notice is taken that non-voice data calls are well known in the art. (Office Action, p. 3; emphasis added).

Additionally, the Office Action cites the Kim reference for teaching “a mobile communication system in which control is performed by an MSC”. (Office Action, p. 3).

Applicants respectfully assert that neither the Chheda reference nor the Kim reference, either individually or in any proper combination, teach or suggest Applicants’ invention as presently claimed in amended independent claims 16 and 28 including ***“enabl[ing] concurrent communication between the wireless subscriber unit and the first and second sources using the traffic channel ..., wherein one of the first and second sources is communicating by non-voice data and the other one of the first and second sources is communicating by voice data”***. Therefore, these references, either individually or in any proper combination, cannot render obvious, under 35 U.S.C. §103, Applicants’ invention as presently claimed in amended independent claims 16 and 28.

Accordingly, Applicants respectfully request the rejection of presently amended independent claim 16 and claims 19 and 25 depending therefrom and presently amended independent claim 28 and claims 29-32 depending therefrom be withdrawn.

Claims 17, 27

Regarding independent claim 17 and claim 18 depending therefrom and independent claim 27, Applicants’ independent claims 17 and 27 include claim limitations not taught or suggested in the cited references.

Applicants’ independent claims 17 and 27 recite, in part, “a mobile switching center (MSC) ... to enable ***concurrent communication*** between the wireless subscriber unit and the first and second sources ***using the traffic channel*** based on the allocated data transmission rates”

The Office Action states that:

Chheda teaches a telecommunication messaging apparatus comprising: engaging in a service negotiation with a wireless subscriber unit in communication with ***a first source*** (Chheda see figure[5] (not figure 1), ***base station 1***) and ***a second source*** (Chheda see figure [5] (not figure 1), ***base station 2***) ***using a traffic channel*** (note that the soft handoff

of Chheda would use a traffic channel, see column 2, liens 54-65, figure 5), (Office Action, p. 2; emphasis added).

Applicants respectfully direct attention to the cited figure 5 of the Chheda reference. In figure 5, it is clear that “a traffic channel” as claimed by Applicants is not capable of connecting with the alleged base station 1 (first source) and base station 2 (second source) as the Chheda reference teaches or suggests separate channels, namely FWD LINK 1 for communication with base station 1 and FWD LINK 2 for communication with base station 2.

Therefore, the allegation that the Chheda reference teaches or suggests Applicants’ claim element of “*concurrent communication* between the wireless subscriber unit and the first and second sources *using the traffic channel*” is not supported by teachings or suggestions in the Chheda reference. Additionally, the Office Action cites the Kim reference for teaching “a mobile communication system in which control is performed by an MSC”. (Office Action, p. 3).

Applicants respectfully assert that neither the Chheda reference nor the Kim reference, either individually or in any proper combination, teach or suggest Applicants’ invention as presently claimed in independent claims 17 and 27 including “*concurrent communication* between the wireless subscriber unit and the first and second sources *using the traffic channel*”. Therefore, these references, either individually or in any proper combination, cannot render obvious, under 35 U.S.C. §103, Applicants’ invention as presently claimed in independent claims 17 and 27.

Accordingly, Applicants respectfully request the rejection of presently presented independent claim 17 and claim 18 depending therefrom and presently presented independent claim 27 be withdrawn.

Obviousness Rejection Based on U.S. Patent No.6,073,025 to Chheda et al. in view of U.S. Patent No.5,889,844 to Kim et al. and further in view of U.S. Patent No. 6,078, 570 to Czaja et al.

Claims 20-24, and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Chheda (U.S. Patent 6,073,025 in view of Kim (U.S. Patent No.5,889,844) and further in view of Czaja et al. (U.S. Patent No. 6,078,570). Applicants respectfully traverse this rejection, as hereinafter set forth.

Claims 20-24,26

The nonobviousness of independent claim 16 precludes a rejection of claims 20-24 and 26 which depend therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. See In re Fine, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), see also MPEP

§ 2143.03. Therefore, the Applicants request that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection to independent claim 16 and claims 20-24 and 26 which depend therefrom.

CONCLUSION

Claims 16-32 are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Examiner determine that additional issues remain which might be resolved by a telephone conference, he is respectfully invited to contact Applicants' undersigned attorney.

Respectfully submitted,

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By: /Ramin Mobarhan/
Ramin Mobarhan, Reg. No. 50,182
(858) 658-2447

QUALCOMM Incorporated
Attn: Patent Department
5775 Morehouse Drive
San Diego, California 92121-1714
Telephone: (858) 658-5102
Facsimile: (858) 658-2502